



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 13, 1998

Mr. Robert S. Johnson
Chappell & McGartland, L.L.P.
1800 City Center Tower II
301 Commerce Street
Fort Worth, Texas 76102-4118

OR98-0450

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112741.

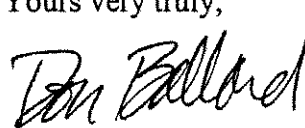
The Fort Worth Independent School District, which you represent, received a request for "all documents pertaining to the UIL District Committee's complaint against Arlington Heights High School head football coach, Ed Koester, and the AHHS Booster Club." You state that you have released most of the requested information. You claim, however, that two documents, two letters concerning the alleged violations, may be excepted from required public disclosure by sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

First, you assert that the documents at issue may be confidential teacher evaluations pursuant to the Education Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 21.355 of the Education Code provides, "Any document evaluating the performance of a teacher or administrator is confidential." This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In Open Records Decision No. 643 (1996), this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* You explain that the person who is the subject of this request "holds a continuing contract as a teacher under chapter 21 of the Education Code. His assigned coaching duties are associated with that teaching contract." After examining the submitted material, we do not believe that the documents you have submitted are confidential evaluations under section 21.355.

You next argue that the documents may be withheld under section 552.102 of the Government Code. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public under common-law privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. We do not believe that the documents are protected by a right of privacy. Open Records Decision Nos. 470 (1987), 455 (1987) (a public employee's job performance is not generally protected by a right of privacy). Both letters must, therefore, be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 112741

Enclosures: Submitted documents

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(w/o enclosures)